IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1470 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHUPATBHAI VALJIBHAI @ GADAWALA NARSHIBHAI SOLANKI
Versus
STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 1470 of 2003
MS SUBHADRA G PATEL for Petitioner No. 1
MR PRADEEP D BHATE, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE KSHITIJ R.VYAS

Date of decision: 22/05/2003

ORAL JUDGEMENT

The petitioner-detenu, in this petition, has challenged order of detention dated 25.11.2002 passed by

the District Magistrate, Bhavnagar, respondent No.2 herein, under the provisions of Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (in short, 'the PASA Act').

After considering four pending trial cases registered by the 'B' Division Police Station, Bhavnagar for the offences under Sections 380, 457 and 114 of IPC and relying upon the statements of four witnesses recorded on 16.11.2002 with respect to the involvement of the petitioner in the illegal activities, the detaining authority has recorded a finding that the petitioner is a 'Dangerous Person' within the meaning of Section 2(c) of the PASA Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, his detention is necessary and therefore, the order of detention has been passed.

Even though learned Counsel for the petitioner has assailed the order of detention on many grounds, it is not necessary for me to consider all the contentions since the petition is required to be allowed on the ground of delay in passing the order of detention. From the grounds of detention, it can be seen that the last offence under IPC registered against the petitioner is C.R.No. 359 of 2002 on 22nd September 2002. The petitioner was arrested with respect to the said offence on 27th September 2002 and was enlarged on bail on 1.10.2002. The petitioner is detained on 25.11.2002, i.e. after about one month and 25 days. Thus, there is a delay of one month and 25 days in passing the order of detention. No explanation is forthcoming for explaining the inordinate delay, even though the reply affidavit is filed by respondent No.2.

True, the authorities have placed reliance on the statements of four witnesses regarding the illegal activities of the petitioner. However, no specific dates of the alleged incident is forthcoming from the respondents. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these four unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. In my opinion, this unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. I am supported with my view by the decision rendered by this Court in the case of Elesh Nandubhai Patel v. Commissioner of Police, Ahmedabad City and ors., reported in 1997(1) G.L.H. 381.

In the result, the petition is allowed. The impugned order of detention dated 25.11.2002 passed against the detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is accordingly made absolute with no order as to costs. Direct service is permitted.

(Kshitij R. Vyas, J.)

Sreeram.